

ROY JONES

IBLA 72-339

Decided March 9, 1973

Appeal from a decision of the Colorado Land Office (Colo. 403) declaring the TK-1 to TK-13 lode mining claims invalid.

Dismissed.

Administrative Practice -- Administrative Procedure: Decisions -- Rules of Practice:
Generally -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals:
Failure to Appeal

A Bureau of Land Management decision, which has become final because no appeal was taken within the time required by the Department's rules of practice, cannot be transformed into an appealable decision by the Bureau's grant of a right of appeal from that decision in responding to an inquiry for information concerning it. Therefore, an appeal to the Board of Land Appeals from the final decision will be dismissed.

Administrative Practice -- Administrative Procedure: Decisions -- Mining Claims:
Contests -- Rules of Practice: Generally -- Rules of Practice: Appeals: Service on
Adverse Party -- Rules of Practice: Government Contests

The Bureau of Land Management must name the Forest Service, United States Department of Agriculture, as an adverse party in all decisions which pertain to contests of mining claims in the national forests.

APPEARANCES: Roy Jones, pro se.

OPINION BY MRS. THOMPSON

This appeal by Roy Jones is from the decision of the Colorado State Land Office, Bureau of Land Management, dated June 9, 1967, invalidating the TK-1 to TK-13 lode mining claims, located in section 36, T. 35 N., R. 4 1/2 E., and section 31, T. 35 N., R. 5 E., N.M.P.M., Conejos County, Colorado, within the Rio Grande National Forest.

That decision stated as follows:

On April 29, 1966, the contestant [the United States] issued a complaint requesting that the above-named unpatented mining claims be declared invalid and alleging as grounds for such a decision that:

- A. No discovery of rock in place bearing valuable deposits of mineral as required by law has been made within the limits of any of the claims.
- B. The lands within the limits of the claims are nonmineral in character.

A copy of the complaint was served on J. R. Freeman on November 16, 1966. Roy Jones was given constructive notice of the contest by publication, mailing, and posting in accordance with Title 43, Code of Federal Regulations, Sections 1852.1-5 and 1852.2-2. The last publication of the notice of the contest was on April 27, 1967.

The complaint contained a notice that unless an answer to the complaint was filed in this office within 30 days after service thereof, the allegations of the complaint would be taken as admitted and the contest decided without a hearing. The published notice of the contest contained a statement that unless an answer to the complaint was filed in this office within 30 days after the last publication of the notice, the allegations of the complaint would be taken as admitted and the contest decided without a hearing.

More than 30 days have passed since service of the complaint on J. R. Freeman and since the last publication of notice of the contest, and no answer has been filed. Therefore, the allegations of the complaint are taken as admitted by the contestees, and the above-named mining claims are declared invalid.

The decision also included a paragraph giving information as to the right of appeal to the Director of the Bureau of Land Management as provided by the rules of practice of this Department at that time.

On December 20, 1971, over four years after the claims were invalidated, the Bureau of Land Management's Colorado State Office received a letter from Roy Jones indicating a third party had brought to his attention the fact that the Bureau had declared the claims

invalid. He stated that he had filed the claims in 1960 and had met the required annual assessment work which was recorded in Conejos County, including the years from 1967 through 1971. He asked why he was not informed of the Land Office's decision and what the basis was for the decision.

The Bureau's State Office responded by informing him by letter of December 22, 1971, that the record in the contest proceeding (No. 403) showed that after a diligent search and inquiry the Forest Service was unable to locate him, and service of the contest was made by publication from March 30 to April 27, 1967, in the Antonito Ledger-News, a newspaper of general circulation in Conejos County, Colorado. It enclosed copies of the complaint, the statement of diligent search to support the service by publication, the affidavit of the newspaper publisher, the certificate of the Land Office Manager, the memorandum of mailing of copies of the complaint and published notice to him at his last known address and at the post office nearest the land, and the decision declaring the claims invalid.

The Bureau should also have informed him that copies of the decision of June 9, 1967, sent to him by certified mail at his last known address in Denver, Colorado, and also to him at Antonito, Colorado, were returned by the Post Office as unclaimed and as undeliverable. Other than that omission, the Bureau's letter of December 22, 1971, provided the information requested by Jones. The Bureau enclosed copies of the rules governing contests and appeals involving public lands in 1966 and 1967. The Bureau also sent copies of current rules pertaining to contests and appeals and informed Jones that he could appeal the decision declaring the claims invalid. This advice resulted in this appeal. The advice was erroneous.

In the posture of the case before the Bureau, the decision of the Land Office of June 9, 1967, was a final decision. The time for filing a notice of appeal from that decision expired 30 days from the service of the decision and that period could not be extended. 43 CFR 1842.4(a) and (c) (1967 ed.). Service was considered made at the time the post office returned the undelivered certified letter. 43 CFR 1840.0-6(e)(3) (1967 ed.). Therefore, the case had been closed. The Bureau could not transform a decision which had become final into an appealable decision by gratuitously providing a right of appeal from that decision. This would extend the time for filing a notice of appeal in direct contravention to the rules of practice applicable then. The same rules are still in effect as to appeals to this Board. 1/

1/ The requirement for a notice of appeal to be filed within 30 days after service of the decision and not allowing an extension of time

As the case now stands we do not have an appealable decision before us. Therefore, appellant's purported appeal must be dismissed as having been improvidently advised by the Bureau. In view of this action, it is unnecessary to discuss other procedural defects in appellant's appeal to this Board. 2/

An additional matter should be brought to the attention of the Bureau. Neither the original decision on the contest nor the Bureau's letter specifically indicated that the Forest Service was an adverse party which must be served in the event of an appeal. In all decisions which pertain to contests of mining claims in the national forests, the Forest Service must be named as an adverse party so that service of any appeals or other documents will be made upon it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member.

fn. 1 (Cont.)

for filing the notice is now set forth at 43 CFR 4.411(a) and (b). The time of service of an undelivered certified letter is set forth at 43 CFR 4.422(c)(3). Although a Manager or Examiner is now permitted to extend the time for filing or serving any document in a contest, 43 CFR 4.422(d), this does not permit extending the period for filing notices of appeal from decisions in closed-out contest proceedings.

2/ In any event, we notice that in his appeal appellant mentions mining activities conducted on the claims. He has not, however, presented any reasons to show why the original decision was in error or should not be deemed a final, binding decision upon him.

